UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SCOTT KIRKLAND,

        Plaintiff,   Civil Action No. 15-CV-13016

vs.   HON. BERNARD A. FRIEDMAN

BARACK OBAMA and
MICHELLE OBAMA,

        Defendants.

_____/

OPINION AND ORDER GRANTING PLAINTIFF'S APPLICATION TO PROCEED IN FORMA PAUPERIS AND DISMISSING THE COMPLAINT

This matter is presently before the Court on plaintiff's application to proceed in forma pauperis. For the following reasons, the Court shall (1) grant the application and therefore allow the complaint to be filed without prepayment of the filing fee, and (2) dismiss the complaint because it is frivolous and/or fails to state a claim upon which relief may be granted.

Pursuant to 28 U.S.C. § 1915(a)(1), the Court may permit a person to commence a lawsuit without prepaying the filing fee, provided the person submits an affidavit demonstrating that he/she "is unable to pay such fees or give security therefor." In the present case, plaintiff's application to proceed in forma pauperis makes the required showing of indigence. The Court shall therefore grant the application and permit the complaint to be filed without requiring plaintiff to prepay the filing fee.

Pro se complaints are held to "less stringent standards" than those drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Nonetheless, the Court is required by statute to dismiss an in forma pauperis complaint if it

        (i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or
(iii) seeks monetary relief against a defendant who is immune from
such relief.

28 U.S.C. § 1915(e)(2)(B). A complaint is frivolous if "it lacks an arguable basis either in law or

in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In other words, a complaint is frivolous if

"based on an indisputably meritless legal theory" or "clearly baseless" facts or "a legal interest

which clearly does not exist" or "fantastic or delusional scenarios." *Id.* at 327-28. To avoid

dismissal for failure to state a claim, "a complaint must contain sufficient factual matter, accepted

as true, to state a claim to relief that is plausible on its face." *Center for Bio-Ethical Reform, Inc. v.

Napolitano*, 648 F.3d 365, 369 (6th Cir. 2011) (citations and internal quotations omitted). Further,

the Court is required to dismiss the complaint, whether or not plaintiff is proceeding *in forma*

pauperis, if the court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

In the present case, plaintiff makes vague allegations suggesting he is incarcerated

unlawfully in Douglas County, Georgia. He claims that a number of his constitutional rights have

been violated. For relief he seeks an order "forfeiting custody and returning me to the State of

Michigan," plus damages. The only named defendants are Barack Obama and Michelle Obama.

The complaint fails to state a claim because no facts are alleged which would entitle

plaintiff to the requested relief. Nor does the complaint allege that defendants played any role in

violating any of plaintiff's constitutional rights. Further, the complaint is barred under *Heck v.*

Humphrey, 512 U.S. 477 (1994), as plaintiff is collaterally challenging his incarceration without showing that his convictions have been overturned or otherwise invalidated.[1]   Accordingly,

IT IS ORDERED that plaintiff's application for leave to proceed in forma pauperis is granted. The complaint is filed and the filing fee need not be prepaid.

IT IS FURTHER ORDERED that the complaint is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel is denied.

                                                     S/ Bernard A. Friedman_____
Dated: September 1, 2015   BERNARD A. FRIEDMAN
       Detroit, Michigan   SENIOR UNITED STATES DISTRICT JUDGE

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[1] Plaintiff indicates in his complaint that he is serving lengthy prison terms in Georgia for convictions on charges of aggravated assault, rape, statutory rape, child molestation, and enticing a child for indecent purposes.